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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:

EVENTIDE CREDIT ACQUISITIONS, LLC,

Debtor.

§ Chapter 11

§ Case No. 20-40349-elm11

§

§

**DEBTOR'S RESPONSE TO CONSUMER BORROWERS'
NOTICE OF ORDER TO SUPPLEMENT AND COMPLETE
RECORD RELATED TO MOTION TO DISMISS**

TO THE HONORABLE EDWARD L. MORRIS,
UNITED STATES BANKRUPTCY JUDGE:

Eventide Credit Acquisitions, LLC (the “Debtor”), the debtor and debtor-in-possession in this chapter 11 case, files this Response to the *Consumer Borrowers' Notice of Order to Supplement and Complete Record Related to Motion to Dismiss* [Dkt. No. 277] (the “Consumer Borrowers' Supplementation”), filed on June 5, 2020, by Lula Williams, John Actis II, Rose Marie Buchert, Dowin Coffy, Dominique De La Bay, Dana Duggan, Lori Fitzgerald, Renee Galloway, Derek Geter, Sonji Grandy, Lucinda Gray, Anthony Green, Keisha Hamm, George Hengle, Chris Koin, Lamesha Kondo, Desiree Wright Lovins, Linda Madison, Lisa Martinez,

Victoria Renee McKoy, Andrea Mendez, Kevin Stanley Minor, Regina Nolte, Sharon Paavo, Tasha Pettiford, Kimberly Pool, Burry Pough, Andrea Scarborough, Anastasia Sherman, Marcella Singh, Carrie Samantha Smith, Richard L. Smith Jr., Teresa Titus, and Latanya Tarleton (collectively, the “Consumer Borrowers”). In support of this Response, the Debtor would respectfully show the Court as follows:

1. With the Consumer Borrowers’ Supplementation, the Consumer Borrowers seek to augment the evidentiary record in support of the *Consumer Borrowers’ Motion for an Order Dismissing the Debtor’s Chapter 11 Case or, in the Alternative, for Abstention* [Dkt. No. 123] (the “Motion to Dismiss”). The supplementation consists of a *Memorandum Order* of United States District Judge Robert E. Payne, dated June 4, 2020 (the “June 4 Order”) denying a motion to reconsider Judge Payne’s prior order refusing to transfer venue of three civil actions (*Williams, Galloway I, and Galloway II*; collectively, the “Virginia Litigation”) pending in the U.S. District Court for the Eastern District of Virginia.

2. Apparently, the only purpose of the Consumer Borrowers’ Supplementation was to bring before this Court certain language in the June 4 Order which suggests that the delay in reaching a resolution in the Virginia Litigation is due to the defendants therein “seeking reconsideration of adverse rulings.” *June 4 Order* at 2. From this, the Court is supposed to infer that if only the defendants would stop their dilatory stunts, the litigation could move to a quick resolution. Without a doubt, the Virginia Litigation has not proceeded expeditiously. However, as a balanced review of the record will show, the cause of the delay has far more to do with the Virginia district court’s docket than with any actions by the defendants.

3. A significant risk exists that the Consumer Borrowers’ late supplementation of the record would, if left unaddressed, leave this Court with a false impression of whether the

Consumer Borrowers' claims can be resolved more quickly and efficiently in this Court or in the Virginia district court. For this reason, and in the interest of fairness, the Debtor asks for the opportunity to provide supplementary materials herewith for the Court's consideration in response to the Consumer Borrowers' Supplementation.

4. Attached hereto as Exhibit A is a current list of open matters in the Virginia Litigation as of January 28, 2020, the day the Debtor filed bankruptcy. As the list indicates, *forty-one* discrete matters remained open, fully briefed, and awaiting a decision by Judge Payne.

5. As the Court can see, numerous preliminary matters, some of which have been pending for as long as one year, remain undecided. Judge Payne's comments in the June 5 Order should not give this Court the impression that the Virginia Litigation can be tried quickly or that the defendants' "seeking reconsideration of adverse rulings" is a significant cause of the delay in resolving the litigation. The truth is that, as often occurs in complex litigation, a backlog of unresolved items has developed, wholly unrelated to the defendants' actions in this litigation. It is disingenuous, therefore, for the Consumer Borrowers to suggest that the Debtor or other defendants are responsible for the backlog. The time for delay is over. The Debtor is ready to resolve the objection to claims in this bankruptcy. This Court has availability in late July to hear the objections. The Chapter 11 claim process is designed to resolve multiple claims quickly and fairly. This Court is the most efficient venue for resolution which is in the best interest of all creditors and parties in interest.

WHEREFORE, the Debtor prays that the Court issue an Order denying the Motion to Dismiss in its entirety and granting the Debtor such other and further relief to which it may be justly entitled.

DATED: June 8, 2020

Respectfully submitted,

/s/ Jeff P. Prostok

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**COUNSEL FOR THE DEBTOR AND
DEBTOR-IN-POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties receiving electronic notice via the Court's CM/ECF system and via email to the parties listed below on June 8, 2020.

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/s/ Jeff P. Prostok
Jeff P. Prostok

Exhibit A

Williams

Motion ECF No.	Motion	Fully Briefed
189	MOTION to Certify Class against Defendant Matt Martorello by Dowin Coffy, Felix Gillison, Jr, George Hengle, Gloria Turnage, Lula Williams. (Kelly, Kristi) (Entered: 09/14/2018)	Yes
475	MOTION for Leave to File Supplemental Authority in support of crime-fraud and class certification by Dowin Coffy, George Hengle, Marcella P. Singh, Gloria Turnage, Lula Williams. (Attachments: # 1 Exhibit 1 - Gingras Opinion, # 2 Proposed Order)(Kelly, Kristi) (Entered: 04/24/2019)	Yes
486	MOTION for Reconsideration re 479 Order on Motion to Compel Granting in Part Plaintiffs' Motion to Compel Information Withheld on the Basis of Attorney-Client Privilege and Request for Oral Argument. (Erbach, John) (Entered: 05/16/2019)	Yes
488	MOTION for Sanctions for Failure to Comply with Court Order Dated May 3, 2019 by Dowin Coffy, George Hengle, Marcella P. Singh, Gloria Turnage, Lula Williams. (Attachments: # 1 Proposed Order)(Bennett, Leonard) (Entered: 05/16/2019)	Yes
499	MOTION Certification of Interlocutory Appeal under 28 U.S.C. Sec. 1292(b) re 479 Order on Motion to Compel Granting in Part Plaintiffs' Motion to Compel Information Withheld on the Basis of Attorney-Client Privilege by Matt Martorello. (Attachments: # 1 Proposed Order)(Erbach, John) (Entered: 05/21/2019)	Yes

Motion ECF No.	Motion	Fully Briefed
500	MOTION to Stay re 479 Order on Motion to Compel Information Withheld on the Basis of Attorney-Client Privilege, 478 Memorandum Opinion (Stay Pending Interlocutory Appeal and/or Decision on a Petition for Writ of Mandamus) by Matt Martorello. (Attachments: # 1 Proposed Order) (Erbach, John) (Entered: 05/21/2019)	Yes
528	MOTION for Reconsideration re 515 Order, 511 Order, Partial Reconsideration of Memorandum Order (ECF No. 515) and Clarification or Modification of Memorandum Order (ECF No. 515) and Order (ECF No. 511) by Matt Martorello. (Erbach, John) (Entered: 05/31/2019)	Yes
536	Memorandum Martorello's Opening Brief Explaining Why He Is Entitled To Proceed With A Privilege Review to 515 Order, filed by Matt Martorello. (Erbach, John) (Entered: 06/07/2019)	Yes
539	MOTION for Protective Order Regarding Plaintiffs' Demand for Second Deposition of Matt Martorello Related to Alleged Spoliation Issues by Matt Martorello. (Erbach, John) (Entered: 06/07/2019)	Yes

Motion ECF No.	Motion	Fully Briefed
542	MOTION to Quash in part Non-Party Subpoena (Conner & Winters) or, in the Alternative, Motion for Protective Order by Matt Martorello, Eventide Credit Acquisition Company, LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Erbach, John) (Entered: 06/10/2019)	Yes
543	MOTION for Protective Order in the Alternative to Motion to Quash Non-Party Subpoena (Conner & Winters)) by Eventide Credit Acquisition Company, LLC, Matt Martorello. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Erbach, John) (Entered: 06/10/2019)	Yes
549	MOTION to Strike Declaration of John Norman in Support of Motion for Reconsideration by Dowin Coffy, George Hengle, Marcella P. Singh, Gloria Turnage, Lula Williams. (Bennett, Leonard) (Entered: 06/14/2019)	Yes
552	MOTION to Compel Production of Documents and Information Withheld on the Basis of Attorney-Client Privilege by Dowin Coffy, George Hengle, Marcella P. Singh, Gloria Turnage, Lula Williams. (Guzzo, Andrew) (Entered: 06/14/2019)	Yes
556	Motion to Compel Documents Withheld by Rosette, LLP	Yes

Motion ECF No.	Motion	Fully Briefed
564	MOTION for Leave to File Reply to Plaintiffs' Response to Court's Order Dated June 6, 2019 by Matt Martorello. (Erbach, John) (Entered: 06/21/2019)	Yes
571	Cross MOTION to Compel Against Non-Party Conner & Winters, LLP by Dowin Coffy, Marcella P. Singh, Gloria Turnage, Lula Williams. (Attachments: # 1 Proposed Order)(Guzzo, Andrew) (Entered: 06/24/2019)	Yes
622	MOTION for Leave to File Supplemental Authority in support of crime-fraud and class certification by Dowin Coffy, George Hengle, Marcella P. Singh, Gloria Turnage, Lula Williams. (Attachments: # 1 Proposed Order)(Kelly, Kristi) (Entered: 09/10/2019)	Yes

Galloway I

Motion ECF No.	Motion	Fully Briefed?
209	Memorandum Defendant Matt Martorello's Memorandum Related to ECF No. 197 Regarding Sealed Exhibits to 197 Order, filed by Matt Martorello. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F)(Erbach, John) (Entered: 04/15/2019)	Yes
248	Response to 201 Order, Martorello's Statement Regarding Sealed Exhibits in Response to April 3, 2019 Order filed by Matt Martorello. (Erbach, John) (Entered: 05/31/2019)	Yes
287	Plaintiffs' Motion to Seal re ECF 286	Yes

Galloway II

Motion ECF No.	Motion	Fully Briefed?
65	MOTION to Dismiss by Bluetech Irrevocable Trust, Breakwater Holdings, LLC. (Solander, Elizabeth) (Entered: 06/28/2019)	Yes
67	MOTION to Dismiss by Kairos Holdings LLC. (Solander, Elizabeth) (Entered: 06/28/2019)	Yes
91	MOTION to Dismiss for Lack of Jurisdiction under Rule 12(b)(2) by Justin Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
92	MOTION to Dismiss for Failure to State a Claim under Rule 12(b)(6) by Justin Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
93	MOTION to Dismiss for Failure to Join an Indispensable Party under Rule 12(b)(7) by Justin Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
96	MOTION to Dismiss for Lack of Jurisdiction under Rule 12(b)(2) by Eventide Credit Acquisitions, LLC, Gallant Capital LLC, Loint LLC. (Erbach, John) (Entered: 07/22/2019)	Yes
97	MOTION to Dismiss for Failure to State a Claim under Rule 12(b)(6) by Eventide Credit Acquisitions, LLC, Gallant Capital LLC, Loint LLC. (Erbach, John) (Entered: 07/22/2019)	Yes
98	MOTION to Dismiss for Failure to Join an Indispensable Party under Rule 12(b)(7) by Eventide Credit Acquisitions, LLC, Gallant Capital LLC, Loint LLC. (Erbach, John) (Entered: 07/22/2019)	Yes

Motion ECF No.	Motion	Fully Briefed?
101	MOTION to Dismiss for Failure to State a Claim under Rule 12(b)(6) by Rebecca Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
102	MOTION to Dismiss for Failure to Join an Indispensable Party under Rule 12(b)(7) by Rebecca Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
103	MOTION to Dismiss for Lack of Jurisdiction under Rule 12(b)(2) by Rebecca Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
105	MOTION for Sanctions by Rebecca Martorello. (Erbach, John) (Entered: 07/22/2019)	Yes
132	MOTION to Dismiss for Lack of Jurisdiction under Rule 12(b)(2) by Jeremy Davis. (Erbach, John) (Entered: 08/06/2019)	Yes
133	MOTION to Dismiss for Failure to State a Claim under Rule 12(b)(6) by Jeremy Davis. (Erbach, John) (Entered: 08/06/2019)	Yes
134	MOTION to Dismiss for Failure to Join an Indispensable Party under Rule 12(b)(7) by Jeremy Davis. (Erbach, John) (Entered: 08/06/2019)	Yes
188	Request for Hearing Re: Motions to Dismiss - Rebecca, Justin, Eventide, Liont, Gallant (Erbach, John) (Entered: 08/28/2019)	Yes
189	Request for Hearing Re: Motions to Dismiss - Jeremy Davis (Erbach, John) (Entered: 08/28/2019)	Yes

Motion ECF No.	Motion	Fully Briefed?
264	MOTION for Protective Order Staying Discovery by Jeremy Davis, Eventide Credit Acquisitions, LLC, Gallant Capital LLC, Liont LLC, Justin Martorello, Rebecca Martorello. (Attachments: # 1 Proposed Order)(Erbach, John) (Entered: 10/14/2019)	Yes
281	MOTION for Joinder IN DEFENDANTS JEREMY DAVIS, JUSTIN MARTORELLO, REBECCA MARTORELLO, EVENTIDE CREDIT ACQUISITIONS, LLC, GALLANT CAPITAL LLC, AND LIONT, LLCS MOTION FOR PROTECTIVE ORDER by Bluetech Irrevocable Trust, Breakwater Holdings, LLC, Kairos Holdings LLC.	Yes

Misc. Actions

Misc. Case No.	Court	Motion	Fully Briefed
19-mc-00009	ED Va	Jennifer Galloway Motion to Quash (transferred 2/25/2019; SOP filed 8/23/2019)	Yes [Note: If it becomes effective, Tribe's waiver of ACP objection in Settlement Agreement will moot a portion of Galloway's motion.]
19-mc-00015	ED Va	Jennifer Weddle Motion to Quash, in part, Plaintiffs' subpoena (transferred 4/16/2019; SOP filed 8/23/2019)	Yes

DI 651-1 List of Motions re Joint Supplemental Notice

Misc. Case No.	Court	Motion	Fully Briefed?
19-mc-00009	ED Va	Jennifer Galloway Motion to Quash (transferred 2/25/2019; SOP filed 8/23/2019)	Yes [Note: If it becomes effective, Tribe's waiver of ACP objection in Settlement Agreement will moot a portion of Galloway's motion.]
19-mc-00014	ED Va	Motion to Compel Against Microbilt (transferred on 3/21/2019)	Yes
19-mc-00015	ED Va	Jennifer Weddle Motion to Quash, in part, Plaintiffs' subpoena (transferred 4/16/2019; SOP filed 8/23/2019)	Yes
19-mc-00018	ED Va	Tolleson Bank Motion to Quash (transferred 7/29/2019)	Yes
19-mc-00019	ED Va	John Wililams Motion to Compel/Motion to Quash (transferred 7/30/2019)	Yes [Note: If it becomes effective, Tribe's waiver of ACP objection in Settlement Agreement will moot a portion of William's motion.]